

The FCC Coddles & AT&T Throttles -- I urge the FCC to reject the AT&T Mobility T Mobil and Qualcomm mergers.

The FCC has taken to heart the maxim "If at first you don't succeed, try, try again," allowing AT&T another chance to prove that its proposed purchase of T-Mobile is a bang-up idea.

Last week, AT&T submitted new economic models in support of its contention that the merger will create new and expanded network capacity for smartphones and tablets. At that time, the FCC hit pause on its 180-day timeline for review of the acquisition, allowing the telecom giant to change its case.

The move marked a change in recent FCC policy, which in this instance had required both AT&T and merger opponents to present all arguments in their initial filings. AT&T, which submitted its new models to the FCC last Monday, has dismissed claims that it's making new arguments, contending that the new filing simply shores up its original rationale that the merger will be a boon to consumers. The submission of AT&T's new models coincided -- coincidentally! -- with a flurry of anti-merger activity on Capitol Hill.

In a letter to the FCC and the Department of Justice last Tuesday, Sen. Al Franken (D-Minn.) urged regulators to reject the deal, arguing that, "The competitive effects of a merger of this size and scope will reverberate throughout the telecommunications sector for decades to come and will affect consumer prices, customer service, innovation, competition in handsets and the quality and quantity of network coverage."

Franken's filing came on the heels of anti-merger sentiments from Sen. Herb Kohl (D-Wis.), chair of the Senate's Subcommittee on Antitrust, Competition Policy and Consumer Rights. In a July 20 letter to Attorney General Eric Holder and FCC Chair Julius Genachowski, Kohl wrote that the merger "would likely cause substantial harm to competition and consumers, [and] would be contrary to antitrust law and not in the public interest, and therefore should be blocked."

It's a safe bet that this kind of industry consolidation -- if the merger goes through AT&T and Verizon will control nearly 80 percent of the mobile wireless market -- isn't addressed in AT&T's new models. Meanwhile, AT&T isn't content to wage the fight for the merger through the FCC alone. Now it's hitting its own customers via a convenient redefinition of the term "unlimited."

The company announced Friday that beginning in October it will throttle speeds of the top five percent of smartphone users on its unlimited data plans. Those plans themselves are no longer even offered; AT&T hasn't made them available to new customers since June 2010.

According to AT&T's press release, anyone who streams "very large amounts of video and music daily over the wireless network" may fall into the top five percent. The company doesn't get much more specific than that but insists the move is necessary to relieve pressure on its network. "Many experts," the release says, "agree that the country is facing a serious wireless spectrum crunch." AT&T doesn't identify these "experts" by name -- perhaps because its definition of "crunch" is self-serving and overblown. In fact, in April the National Association of Broadcasters filed a study with the FCC suggesting that the wireless industry's spectrum-crunch arguments should be examined more

carefully. (Read the whole story [here](#).)

And other industry insiders have found fault with AT&T's story, which it's been spinning ever since it announced the takeover of T-Mobile in March. Any capacity problems AT&T may be experiencing are largely due to its own failures. In May, Sprint CEO Dan Hesse told *Wired*, "If AT&T invested a fraction of the \$39 billion T-Mobile purchase price in its own network, it could alleviate its alleged capacity concerns, upgrade its network and deploy advanced wireless technologies without harming wireless competition." (Sprint, incidentally, is the only major carrier that does not cap data or impose speed limits on users.)

PCWorld's Tony Bradley also finds AT&T's throttling argument dubious, calling it "political theater." Ethan McKinney at *ConceivablyTech* calls it "blackmail."

Still, AT&T insists that its spectrum crunch is real — and that the fix it's applying come fall is only a stopgap measure. "[I]t will not solve our spectrum shortage and network capacity issues. Nothing short of completing the T-Mobile merger will provide additional spectrum capacity to address these near-term challenges," its announcement said.

In other words, the sky is falling. And only a monopolistic merger can make things right.

In the end, AT&T is free to throttle speeds for supposedly unlimited data plans, no matter how much it will hurt consumers. What it shouldn't do, however, is use its throttling to justify this disastrous merger.